



**Wheelabrator Technologies Inc.**

4 Liberty Lane West  
Hampton, NH 03842

Philip Giudice, Commissioner  
Department of Energy Resources  
Executive Office of Energy and Environmental Affairs  
[Green.Communities@MassMail.State.MA.US](mailto:Green.Communities@MassMail.State.MA.US)

October 14, 2008

Re: Comments on Class II Regulations

Wheelabrator Technologies Inc. (Wheelabrator) submits the following comments in response to the Department of Energy Resources' August 27, 2008 request for comments on the RPS Class II Regulations as required by the Massachusetts Green Communities Act of 2008.

Wheelabrator owns and operates three waste-to-energy plants in the Massachusetts, with a combined generating capacity of 124 megawatts of clean, renewable energy.<sup>1</sup> The Green Communities Act formalizes the desire of the legislature that retail electric suppliers include electricity from existing renewable energy sources in their mix of energy sold to consumers<sup>2</sup>. Additionally, the Act specifies that the department of energy resources shall adopt rules allowing a retail electric supplier to discharge its obligations under this section by making an alternative compliance payment in an amount established by the department for Class II sources.

Issues relative to Class II and Waste-to-Energy

The Green Communities Act requires that the department of energy resources develop regulations to implement the RPS Class II requirements of the Act (Chapter 25A, Section 11F). In the implementation of the Class II RPS, there are some fundamental issues that must be addressed:

- What amount of Class II energy or renewable energy certificates should retail electric suppliers be required to obtain?
- Should out-of-state Class II facilities be allowed to participate in the Massachusetts RPS?
- What should be the amount of the Class II Alternative Compliance Payment?

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<sup>1</sup> Waste-to-energy has been defined as renewable energy in the Commonwealth for more than a decade (Massachusetts Electric Utility Restructuring Act, Chapter 25A: Section 11F, 1997.)

<sup>2</sup> Chapter 25A, Section 11F(d)

### Amount of Class II energy or renewable energy certificates required

Chapter 25A, Section 11F(d) states that “Every retail electric supplier providing service under contracts executed or extended on or after January 1, 2009, shall provide a minimum percentage of kilowatt-hour sales to end-use customers in the commonwealth from Class II renewable energy generating sources.” The legislative history makes it clear that the legislature intended that the Commonwealth desires to help ensure the continued operation of existing renewable energy sources.

The 1997 Massachusetts Electric Utility Restructuring Act required the department of energy resources to determine “the actual percentage of kilowatt-hours sales to end-use customers in the commonwealth which is derived from existing renewable energy generating sources” in order to ensure that the amount of actual energy sales from existing renewable energy sources would be maintained.

If the Commonwealth is to continue to grow *and maintain* its in-state renewable energy, we cannot allow existing facilities, which make up the base of the renewables in Massachusetts, to fall by the wayside while only providing incentives to new, smaller facilities.

New renewable energy generating sources in the Commonwealth have a variety of financial incentives, e.g., grants, federal Production Tax Credits (\$20 per MWh), RPS requirements (\$50-plus per MWh), etc. These incentives are all additive to the revenue of these new facilities from the actual sale of electricity to retail electric suppliers. In contrast, existing renewable energy sources get no such incentives and are faced with a fiercely competitive situation with regards to sale of the electricity that these facilities generate, putting them in financial jeopardy.

According to a department of energy resources report, the 1997 baseline generation of renewable energy was 7.8% for Massachusetts eligible sources<sup>3</sup>. Therefore, in order to maintain the existing base of renewable energy sources, the minimum percentage of kilowatt-hour sales to end-use customers in the commonwealth from Class II renewable energy generating sources should be 7.8%.

### Location of Class II Sources

The Act clearly defines what is a Class II renewable energy generating source. Wheelabrator recommends that the eligible Class II sources should be limited to those located in Massachusetts, or those located in ISO-New England that can demonstrate to the department of environmental protection that they would meet all of the requirements of the department.

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<sup>3</sup> *The Viability and Impact of Establishing a Minimum Purchase Requirement in Massachusetts for Existing Renewable Energy*, October 2003.

Since ratepayers in the Commonwealth will be paying to help ensure the continued operation of these Class II facilities, it is only right that the facilities be located in Massachusetts or that they at least be located in neighboring states and demonstrate that they could comply with the high environmental standards that Bay State residents demand of in-state facilities.

This is not a new concept as the State of New Jersey has a similar requirement for its Class II sources<sup>4</sup>. To obtain a compliance determination, the facility operator submits a request for the determination, including documentation, to the NJ Department of Environmental Protection. A similar determination could be made by the Massachusetts DEP. This is not an unreasonable requirement and has not brought any protests in New Jersey.

#### Class II Alternative Compliance Payment

As with the existing Alternative Compliance Payment (ACP) in Massachusetts, the purpose of the Class II ACP is to allow retail electric suppliers to meet the minimum Class II purchase requirement obligation even if, for whatever reason, there is not enough Class II electricity or attributes to meet the respective supplier's requirement. The amount of the Class II ACP, as it is with the current ACP, must be set at a value that motivates the retail electric supplier to search out Class II energy or credits, but not so high that it is unreasonable. It must also be competitive with ACPs in surrounding states so as to not create undue competition for renewable energy between the states.

The State of New Hampshire has recently implemented an RPS requirement with the Class II and Class III ACP set at \$28.72. Therefore, Wheelabrator recommends a Class II ACP of \$28.00.

#### Waste-to-Energy

Finally, there is a provision in Chapter 25A, Section 11F(d), requiring that waste-to-energy operators that sell their renewable energy certificates pursuant to Section 11F(d) must provide at least 50% of the revenue for recycling programs as approved by the department of environmental protection.

Wheelabrator supports this concept and wants to provide the maximum flexibility for the department of environmental protection. Therefore, Wheelabrator recommends that the regulations provide that a waste-to-energy facility may comply with this provision by:

1. Operating or contracting for one or more recycling programs approved by the department of environmental protection, or
2. In lieu of operating or contracting for one or more recycling programs, a facility may comply with the requirement by payment to the department of environmental protection of an amount at least equal to 50 per cent of any net revenue received by the facility through the sale of Massachusetts RPS-eligible renewable energy certificates.

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<sup>4</sup> NJ 14:4-8.6 Compliance with class II renewable energy requirements.

In order to clearly identify the recommendations in these comments, we have attached a draft of the pertinent sections of a proposed rule implementing the above recommendations.

Wheelabrator is ready to work with the department of energy resources and the department of environmental protection to expeditiously develop requirements implementing the Green Communities Act. If you have any questions on the above, please contact me at [fferraro@wm.com](mailto:fferraro@wm.com) or 603-929-3305.

Sincerely,

Francis A. Ferraro  
VP, Public Affairs

Attachment

## Attachment A. Proposed Regulatory Language for Class II RPS

Additions to current language are in blue, underlined italics.

Deletions are in ~~red strikethrough~~.

### 225 CMR 14.00 - RENEWABLE ENERGY PORTFOLIO STANDARD

#### 14.02: Definitions

Class I Renewable Generation. The electrical energy output of a Class I Renewable Generation Unit, or that portion of the electrical energy output of a Generation Unit that qualifies under a Vintage Waiver, pursuant to 225 CMR 14.05 (2), or a Co-firing with Ineligible Fuels Waiver, pursuant to 225 CMR 14.05 (3).

Class I Renewable Generation Attribute (Attribute). The Generation Attribute of the electrical energy output of a specific Generation Unit that derives from the Unit's production of Class I Renewable Generation.

Class I Renewable Generation Unit. A Generation Unit that has received a Statement of Qualification from the Division.

Class II Renewable Generation. The electrical energy output of an existing Renewable Generation Unit, pursuant to 225 CMR 14.05 (6).

Class II Renewable Generation Attribute (Attribute). The Generation Attribute of the electrical energy output of a specific Generation Unit that derives from the Unit's production of Class II Renewable Generation.

Class II Renewable Generation Unit. A Generation Unit pursuant to 225 CMR 14.05 (6).

Renewable Energy. Energy generated from any source that qualifies as a Class I or Class II renewable energy generating source under section 11F of chapter 25A; provided, however, that after conducting administrative proceedings, the department of energy resources, in consultation with the department of agriculture, may add technologies or technology categories.

Renewable Generation. The electrical energy output of a Renewable Generation Unit.

Renewable Generation Attribute. The Generation Attribute of the electrical energy output of a specific Generation Unit that derives from the Unit's production of Renewable Generation.

Renewable Generation Unit. A Generation Unit that pursuant to 14.05.

**14.05: Eligibility Criteria for Renewable Generation Units.**

**(1) Class I Eligibility Criteria.** A Generation Unit may qualify as a Class I Renewable Generation Unit subject to the limitations set forth herein.

**(6) Class II Eligibility Criteria.** A Generation Unit shall qualify as a Class II Renewable Generation Unit subject to the limitations set forth herein.

**(a) A Class II Renewable Energy Generating Source is:**

**(1) a source that began commercial operation before December 31, 1997,**

**(2) is located within the Commonwealth, or is located in ISO-NE and can demonstrate to the department of environmental protection that it meets or exceeds all department of environmental protection requirements that would apply to the facility if it were located in the Commonwealth, and**

**(3) generates electricity using any of the following:**

- a. solar photovoltaic or solar thermal electric energy;**
- b. wind energy;**
- c. ocean thermal, wave or tidal energy;**
- d. fuel cells utilizing renewable fuels;**
- e. landfill gas;**
- f. energy generated by existing hydroelectric facilities, provided that such existing facility shall meet appropriate and site-specific standards that address adequate and healthy river flows, water quality standards, fish passage and protection measures and mitigation and enhancement opportunities in the impacted watershed as determined by the department in consultation with relevant state and federal agencies having oversight and jurisdiction over hydropower facilities; and provided further, that only energy from existing facilities up to 5 megawatts shall be considered renewable energy and no such facility shall involve pumped storage of water nor construction of any new dam or water diversion structure constructed later than January 1, 1998;**
- g. waste-to-energy which is a component of conventional municipal solid waste plant technology in commercial use;**
- h. low emission advanced biomass power conversion technologies using fuels such as wood, by-products or waste from agricultural crops, food or animals, energy crops, biogas, liquid biofuel including but not limited to biodiesel, organic refuse-derived fuel, or algae;**
- i. marine or hydrokinetic energy as defined in section 3; or**
- j. geothermal energy.**

- (b) A facility in clause (7) shall not be a Class II renewable generating source unless it operates or contracts for one or more recycling programs approved by the department of environmental protection.
- 1) At least 50 per cent of any net revenue received by the facility through the sale of Massachusetts Renewable Generation Attributes shall be allocated to such recycling programs.
  - 2) In lieu of operating or contracting for one or more recycling programs, a facility in clause (7) may comply with the requirement in 14.05(6)(b) by payment of the amount in 14.05(6)(b)(1) to the department of environmental protection.
- (c) A Class II renewable generating source may be located behind the customer meter within the ISO-NE control area provided that the output is verified by an independent verification system participating in the NEPOOL GIS accounting system and approved by the department.

#### **14.07: Renewable Energy Portfolio Standard.**

(3) Minimum Standard. Beginning January 1, 2009 and for every year thereafter, the total annual sales of each Retail Electricity Product sold to Massachusetts End-Use Customers by a Retail Electricity Supplier shall contain a minimum of 7.8 percent of electrical energy sales from Class II Renewable Generation Attributes.

#### **14.08: Compliance Procedures for Retail Electricity Suppliers.**

(1) Standard Compliance. Each Retail Electricity Supplier shall be deemed to be in compliance with 225 CMR 14.00 if the information provided in the Compliance Filing submitted pursuant to 225 CMR 14.09 is true and accurate and demonstrates compliance with 225 CMR 14.07. A Retail Electricity Supplier shall demonstrate to the satisfaction of the Division that Class I Renewable Generation Attributes and Class II Renewable Generation Attributes used for compliance have not otherwise been, nor will be, sold, retired, claimed, used or represented as part of electrical energy output or sales, or used to satisfy obligations in jurisdictions other than Massachusetts.

(2) Banked Compliance. A Retail Electricity Supplier may use New Renewable Generation Attributes or Class II Renewable Generation Attributes produced in one Compliance Year for compliance in either or both of the two subsequent Compliance Years, subject to the limitations set forth herein and provided that the Retail Electricity Supplier is in compliance with 225 CMR 14.00 for all previous Compliance Years. In addition, the Retail Electricity Supplier shall demonstrate to the satisfaction of the Division that such Attributes:

(a) were in excess of the Class I Renewable Generation Attributes or Class II Renewable Generation Attributes needed for compliance in the Compliance Year in which they were generated, and that such excess Attributes have not previously been used for compliance with 225 CMR 14.00;



(b) do not exceed thirty percent of the [Class I](#) Renewable Generation Attributes [or Class II Renewable Generation Attributes](#) needed by the Retail Electricity Supplier, [for compliance with the respective requirements of 14.07](#), in the year they were generated;

(c) were produced by the generation of electrical energy sold to End-Use Customers in the ISO-NE Control Area during the Compliance Year in which they were generated or were generated by Behind the Meter or Off-Grid Generation Units in Massachusetts; and

(d) have not otherwise been, nor will be, sold, retired, claimed or represented as part of electrical energy output or sales, or used to satisfy obligations in jurisdictions other than Massachusetts.

(3) Alternative Compliance. A Retail Electricity Supplier may discharge its obligations under 225 CMR 14.07 (in whole or in part) for any Compliance Year by making an Alternative Compliance Payment (ACP) to the Massachusetts Technology Park Corporation, established by M.G.L. c. 40J.

(a) Procedures. A Retail Electricity Supplier shall receive Alternative Compliance Credits from the Division, subject to the following:

1. The quantity of Credits, specified in MWhs, that can be applied to its obligations under 225 CMR 14.07 shall be determined by calculating the ratio of the total of ACPs paid for the Compliance Year to the ACP Rate for that Compliance Year.

2. The ACP Rate shall be \$50 dollars per MWh for Compliance Year 2003 [for Class I Renewable Generation Attributes, and shall be \\$28.00 per MWh for Compliance Year 2009 for Class II Renewable Generation Attributes](#). For each subsequent Compliance Year for the Division shall publish the ACP Rate by January 31 of the Compliance Year. The ACP Rate shall be equal to the previous year's ACP Rate adjusted up or down according to the previous year's Consumer Price Index.

3. The Retail Electricity Supplier shall include with its Annual Compliance Filing copies of any ACP receipt(s) for ACPs made to the Massachusetts Technology Park Corporation during the Compliance Year.

(b) Use of Funds. The Division shall oversee the use of ACP funds by the Massachusetts Technology Park Corporation so as to maximize the commercial development of [Class I](#) Renewable Generation Units.

#### 14.09: Annual Compliance Filings for Retail Electricity Suppliers.

(1) Date of Annual Compliance Filing. For each Compliance Year, the Retail Electricity Supplier annually shall file an annual Compliance Filing with the Division no later than the first day of July, or the first Business Day thereafter, of the subsequent Compliance Year.

(2) Contents of Annual Compliance Filing. For each Retail Electricity Product, the Filing shall document compliance with the provisions of 225 CMR



14.07 and 14.08 to the satisfaction of the Division and shall include, but not be limited to, the following:

(a) Total Electrical Energy Sales to End-Use Customers.

Documentation of the total MWhs of electrical energy allocated by the Retail Electricity Supplier to End-Use Customers in the Compliance Year. Such allocation is defined herein as the total quantity of the Supplier's Certificates Obligation that the Supplier correctly allocated or should have allocated to all of the Supplier's Massachusetts retail subaccounts in the NEPOOL GIS, in compliance with all relevant provisions of Part 4 of the NEPOOL GIS Operating Rules, or any successor rules.

(b) Electrical Energy Sales to End-Use Customers by Product.

Documentation of the total MWhs of each Retail Electricity Product allocated to End-Use Customers in the Compliance Year, verified by an independent third party satisfactory to the Division, consistent with the Guidelines. Such allocation is defined herein as the quantity of the Supplier's Certificates Obligation that the Supplier correctly allocated or should have allocated to each of the Supplier's Massachusetts retail subaccounts at the NEPOOL GIS, in compliance with all relevant provisions of Part 4 of the NEPOOL GIS Operating Rules, or any successor rules. The Division shall keep product information confidential to the extent permitted by law.

(c) Attributes Allocated from the Compliance Year. Documentation of the total MWhs of each Retail Electricity Product allocated to End-Use Customers that was derived from [Class I Renewable Generation](#) *and* [Class II Renewable Generation](#) in the Compliance Year, as follows:

1. For electrical energy transactions included in the ISO-NE Settlement Market System, the Compliance Filings shall include documentation from the NEPOOL GIS administrator of the Retail Electricity Supplier's ownership of GIS Certificates representing [Class I Renewable Generation](#) *or* [Class II Renewable Generation](#) produced by [Class I Renewable Generation Units](#) *or* [Class II Renewable Generation Units](#) during the Compliance Year.

2. For electrical energy transactions not included in the ISO-NE Settlement Market System, but for which the Retail Electricity Supplier has secured GIS Certificates from the NEPOOL GIS administrator, the Compliance Filings shall include documentation from the NEPOOL GIS administrator of the Retail Electricity Supplier's ownership of GIS Certificates representing [Class I Renewable Generation](#) *or* [Class II Renewable Generation](#) produced by [Class I Renewable Generation Units](#) *or* [Class II Renewable Generation Units](#) during the Compliance Year.

3. For electrical energy transactions not included in the ISO-NE Settlement Market System, and for which the Retail Electricity Supplier has not secured GIS Certificates from the NEPOOL GIS administrator, the Compliance Filing shall include documentation verified by an independent third party satisfactory to the Division, consistent with the Guidelines, including but not limited to the following:

- a. the identification of each [Class I](#) Renewable Generation Unit [or Class II Renewable Generation Unit](#) from which [Class I](#) Renewable Generation Attributes [or Class II Renewable Generation Attributes](#) were claimed by the Retail Electricity Supplier for its compliance in the Compliance Year;
- b. the quantity of [Class I](#) Renewable Generation [or Class II Renewable Generation](#) produced by each such Unit for each applicable month of the Compliance Year; and
- c. assurances satisfactory to the Division that the [Class I](#) Renewable Generation Attributes [or Class II Renewable Generation Attributes](#) have not otherwise been, nor will be, sold, retired, claimed, used or represented as part of electrical energy output or sales, or used to satisfy obligations in jurisdictions other than Massachusetts.

(d) Attributes Allocated from Banked Compliance. Allocation by Retail Electricity Product of any Attributes banked from one or both of the two previous years pursuant to 225 CMR 14.08 (3) that are used to demonstrate compliance in the current Compliance Year;

(e) Alternative Compliance Credits. Allocation by Retail Electricity Product of any Alternative Compliance Credits claimed pursuant to 225 CMR 14.08 (3), along with a copy of any Alternative Compliance Payment receipt(s);

(f) Attributes Banked for Future Compliance. Identification of any [Class I](#) Renewable Generation Attributes [or Class II Renewable Generation Attributes](#) that the Retail Electricity Supplier anticipates claiming for purposes of Banked Compliance in subsequent years under the Banked Compliance provisions of 225 CMR 14.08 (2); and

(g) Renewable Generation Attributes. Documentation from the NEPOOL GIS administrator of the total electrical energy sales to End-Use Customers in the Compliance Year associated with Renewable Generation Attributes.

#### 14.10: Reporting Requirements.

(1) Certification. Any person required by 225 CMR 14.00 to submit documentation to the Division shall provide:

- (a) name, title and business address;
- (b) the person's authority to certify and submit the documentation to the Division; and
- (c) the following certification: "I hereby certify, under the pains and penalties of perjury, that I have personally examined and am familiar with the information submitted herein and based upon my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties, both civil and criminal, for submitting false information, including possible fines and imprisonment."

(2) Annual Renewable Energy Resource Report. The Division will produce an annual report that summarizes information submitted to the Division by Retail Electric Suppliers in the Annual Compliance Filing submitted to the Division pursuant to 225 CMR 14.09 (2) (a) and (g).

(3) Identification of Renewable Generation Units.

- (a) The Division shall inform the NEPOOL GIS administrator which Generation Units should be designated as Renewable Generation Units pursuant to 225 CMR 14.00.
- (b) An Owner or Operator of a Generation Unit that does not participate in the NE-GIS may petition the Division to have the Unit designated as a Renewable Generation Unit.

#### 14.11: Inspection.

(1) Document Inspection. The Division may audit the accuracy of all information submitted pursuant to 225 CMR 14.00. The Division may request and obtain from any Owner or Operator of a Renewable Generation Unit and any Retail Electricity Supplier information that the Division determines necessary to monitor compliance with and enforcement of 225 CMR 14.00.

(2) Audit and Site Inspection. Upon reasonable notice to a Retail Electricity Supplier or ~~New~~ Renewable Generation Owner or Operator, the Division may conduct audits, which may include inspection and copying of records and/or site visits to a ~~New~~ Renewable Generation or a Retail Electricity Supplier's facilities, including, but not limited to, all files and documents that the Division determines are related to compliance with 225 CMR 14.00.

#### 14.12: Non-Compliance.

Any Retail Electricity Supplier or Owner or Operator of a ~~New~~ Renewable Generation Unit that fails to comply with the requirements of 225 CMR 14.00 shall be subject to the following provisions:

(1) Notice of Non-Compliance. A failure to comply with the requirements of 225 CMR 14.00 shall be determined by the Division. A written Notice of Non-Compliance shall be prepared and delivered by the Division to any Retail Electricity Supplier or Owner or Operator of a ~~New~~ Renewable Generation Unit that fails to comply with the requirements of 225 CMR 14.00. The Notice of Non-Compliance shall describe the Requirement(s) with which the Retail Electricity Supplier, Owner, or Operator failed to comply and the time period of such non-compliance.

(2) Publication of Notice of Non-Compliance. A Notice of Non-Compliance may be published on the Division web-site and in any other media deemed appropriate by the Division. Such publication may remain posted until the Retail Electricity Supplier or Owner or Operator returns to compliance as determined by the Division.

(3) Planning Requirement. A Retail Electricity Supplier that fails to meet the requirements of 225 CMR 14.07 during a Compliance Year shall submit a plan for achieving compliance for the subsequent three years. The plan shall be filed with the Division no later than the first day of September of the Compliance Year subsequent to the Compliance Year for which the Retail Electricity Supplier was out of compliance.

(4) Suspension or Revocation of License. The Division shall refer its findings of non-compliance to the Department of Public Utilities. A Retail Electricity Supplier that fails to comply with 225 CMR 14.00 may be subject to the Department of Public Utilities Licensure Action under 220 CMR 11.07 (4) (c) (1).

#### 14.13: Severability.

If any provision of 225 CMR 14.00 is declared invalid, such invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.